

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL TYRONE MCCULLON,

Petitioner,

v.

DAVID EBBERT, et al.,

Respondent.

CIVIL NO. 3:15-CV-1205

(Judge Kosik)

FILED
SCRANTON

JUL 17 2015

Per JL
DEPUTY CLERK

ORDER

AND NOW, this 17th day of July, 2015, IT APPEARING TO THE COURT

THAT:

(1) Petitioner, Michael Tyrone McCullon, filed the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, *pro se*, on June 19, 2015 (Doc. 1);

(2) In his petition, Petitioner challenges his current confinement in the Special Management Unit at the United States Penitentiary, Lewisburg, Pennsylvania;

(3) The action was assigned to Magistrate Judge Martin C. Carlson for Report and Recommendation;

(4) On June 22, 2015, the Magistrate Judge issued a Report and Recommendation (Doc. 3), wherein he recommended that the petition for writ of habeas corpus be denied;

(5) Specifically, the Magistrate Judge found that Petitioner did not make out a valid case for pursuing habeas relief because his complaints related to his conditions of confinement;

(6) Petitioner has failed to file timely objections to the Magistrate Judge's Report and Recommendation;

AND, IT FURTHER APPEARING THAT:

(7) If no objections are filed to a Magistrate Judge's Report and Recommendation, the petitioner is not statutorily entitled to a *de novo* review of his claims. 28 U.S.C.A. § 636(b)(1); Thomas v. Arn, 474 U.S. 140, 150-53 (1985).

Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

(8) We have considered the Magistrate Judge's Report, and we concur with his recommendation. After reviewing the record, we agree with the Magistrate Judge that a petition for writ of habeas corpus is the improper avenue of pursuing relief for Petitioner's complaints, and that summary dismissal under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, is appropriate. Petitioner's complaints as to the conditions of confinement, do not challenge Petitioner's legality of detention. We also agree that we cannot simply construe Petitioner's petition for writ of habeas corpus as a Bivens civil rights action.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Martin C. Carlson dated June 22, 2015 (Doc. 3) is **ADOPTED**;

(2) Petitioner's petition for writ of habeas corpus is **DENIED WITHOUT PREJUDICE**, allowing Petitioner to file a separate civil rights action if he chooses to do so;

(3) Petitioner's motion for leave to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;

(4) The Clerk of Court is directed to **CLOSE** this case and to forward a copy of this Order to the Magistrate Judge; and

(5) Based on the Court's conclusions herein, there is no basis for the issuance of a certificate of appealability.


Edwin M. Kosik
United States District Judge